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STATE CORPORATION COMMISSIONER EXPLAINS NEW CORPORATE SECURITIES LAW

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The California Corporate Securities Act

AMENDMENTS BY 1931 LEGISLATURE EXPLAINED BY COMMISSIONER HAIGHT. NEW RULES AND REGULATIONS. ADMINISTRATION OF ACT RESTS LARGELY UPON ATTORNEYS

By Raymond L. Haight, Corporation Commissioner of the State of California, Member of Los Angeles Bar

Twenty years ago a Kansas legislator, in introducing a bill regulating the sale of securities, made the statement that the promotors who infested the State of Kansas would sell stock in the bright blue sky itself. His bill was, upon passage, dubbed the "Blue Sky Law." Since that time every state in the Union, with the exception of Nevada, has adopted some form of Blue Sky legislation. Most of it, however, has been passed during the last ten years. It is, therefore, a comparatively recent addition to the law and has been subject to much criticism. All such criticism, however, when analyzed, has been found to be based upon the method of enforcing the law rather than of the law itself.

The amendments to the Corporate Securities Act of the State of California adopted at the 1931 session of the State Legislature were largely designed to assist in making control less burdensome upon legitimate business, yet more difficult for fraudulent promoters to circumvent.

Recurrently the problem of social control as against the policy of *laissez faire* is agitated and becomes intense in periods of social transition. We have learned, however, by bitter experience, that free competition does not always make for public good. Thus we have social control in the form of state utilities commissions, the Interstate Commerce Commission, commissions for banking, insurance, building and loan, and trade. Following upon this has been Blue Sky legislation designed as a catch-all for security transactions. There is no space here to show the social necessity out of which emanated Blue Sky legislation, but it is sufficient to say that regardless of all the ranting about paternalism, social control through governmental bureaus is here to stay as an integral part of our governmental system.

Caveat Emptor Archaic Doctrine

It might be well to add that the rule of caveat emptor, which sounded so well when property consisted solely of land and cattle, can no longer be considered anything but an archaic doctrine that has had to be modified. Trade marks, patents, goodwill, stock shares, trusteed beneficial interests, royalties, and other forms of abstract and intangible personal property rights make it no longer true that a purchaser is as good a judge of qualities as a seller. Even the well educated professional man is no longer expected to understand the intricacies of all of the various types of financing which have been developed as a part of modern civilization.

Three general methods have been developed for the control of securities by the states:

1. Control of the dealer selling securities.
2. Controlling the security itself by passing upon it before it is offered to the public.
3. The stop order or injunction method, which is the basis of the Martin Fraud Act of the State of New York.

California has for some years operated under a combination of the first two methods. The weakness in this system lies in the fact that it encourages a tremendous amount of red tape in connection with authorizing the issuance of a security, which tape the fraudulent promoter often succeeds in circumventing, yet gives the Commissioner little power to protect the investor once a security has received the approval of the department.

New Program of Control

Under the stop order and injunction method the Commissioner literally continues to control the sale of the security and can, in cases of urgent necessity, enforce his orders through the courts without recourse to the district attorneys. It may be said that this new program of control played an important part in the design of most of the amendments. This will be more clearly brought out as the more important of the individual amendments are discussed.

The first amendment of importance is in the definition of the word "security". "Pre-organization certificates" and "pre-organization subscriptions" have been omitted. The purpose of this omission was to legal-

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EDITORIAL

PROFESSIONAL ETHICS AND DISCIPLINE

In a recent issue of a bar journal a contributor declared, in no uncertain language, that the Bar Association was devoting too much attention to the rules of ethics and disciplinary matters. Although the statement has gone unchallenged, its very lack of logic refutes it. One might write at interminable length of the necessity for ethical rules and disciplinary measures, and of the duty of enforcing them, but it all would come to the same conclusion, namely; these are the means which, plus respect for and pride in the profession of the law, must be used to restore the lawyer to the position he once held in the opinion of the public.

Every member of the Bar should feel, and most of them do feel, that theirs is one of the most dignified of professions. All of the traditions of the Bar aid in engendering that feeling. Every attorney should strive to guard his professional conduct so that no reproach may be directed against him and thereby reflect upon his profession.

We are now more than at any other time in the history of our Bar an organization in the true sense of the word. Under the changing order of things we have made, and are making, a splendid and praiseworthy progress. No organization, however, whether of the bar or of other groups, can hope for complete success unless there is a substantial unity of action. There can be no real unity of action in any Bar Association unless there is, and continues to be, a common object, a common purpose among the members of that organization; and the rules and canons governing the actions of the members serve to aid in defining, formulating and directing the aims and action of the members in achieving that common object and purpose. To disregard in any considerable degree the rules and canons of our profession would be tantamount to repealing them.

Some one has said that a law tattered in places is wholly hidden by the tatters. Rules, written and unwritten, are for the better guidance and direction of the members, and those attorneys who believe in the integrity, high ideals and success of our Bar as a whole will do all in their power to keep inviolate those rules, and thereby help to establish and maintain that high standard which the profession should hold.

ize tentative pre-organization negotiations. The omission, however, will not permit the collection of any part of the consideration on account of such pre-organization subscriptions until a permit has been obtained.

Amendments Explained

The remaining more important amendments are as follows:

(a) The definition of oil securities was extended by adding the words "title or" so that it now reads "Certificate of interest in an oil or gas title lease." The addition of "titles" to this definition was for the purpose of including undivided interests in such leases.

(b) An exception was added in the same section (No. 2a) for the purpose of legalizing the issuance of certificates or receipts by committees or depositaries receiving various securities in order to procure joint action and protection for the owners or holders thereof.

(c) In defining "agents" the words "or any other person" were added in order to include those individuals employed by others than companies or brokers. Thus, an individual owning a large block of stock or other securities, and disposing of them through agents or representatives must see to it that such agents or representatives are licensed. In the same section the words "not exempt under the provisions of this act" have been omitted, thus strengthening the definition of an agent by extending it to cover practically all sales of securities.

(d) The new definition of the word "broker" likewise eliminates the words "not exempt under the provisions of this act" for the same purpose as obtained in the case of agents. Numerous unlicensed brokers have operated in the past by simply claiming that the securities offered by them were securities exempt under the provisions of the Act.

Personally Owned Stock Sales

(e) The exemption relating to the sale of personally owned stock has been more specifically stated in order to clear up several questions which have heretofore existed. Thus, exemption will not apply if the sale is made directly or indirectly for the benefit of the issuer or the underwriter, or if made for the direct or indirect promotion of any scheme or enterprise. This should enable the Commissioner to reach a great many schemes which have heretofore not been expressly within his jurisdiction.

(f) Section 3 has been re-written giving the requirements of an application in outline form. It is a much discussed question as to whether or not the Commissioner has jurisdiction where there is a failure to meet all of the listed requirements of Section 3. A new section makes this procedure less difficult to follow.

(g) Section 5, in addition to giving the Commissioner the power to establish such rules and regulations as may be reasonable or necessary to carry out the provisions of the act, contains a new provision authorizing the Commissioner to issue desist orders to companies. Heretofore such power has been confined to brokers. The new power is of great importance as the Commissioner in the past has been unable to take any affirmative action in the case of a company operating without a permit or failing to recognize a suspension or revocation of its permit.

(h) Under the new act, bonds given by brokers shall expressly cover the faithful performance by the broker of his obligations under any installment purchase contracts.

Broker and Agent

(i) Section 7. This section relating to the licensing of brokers and agents has been practically rewritten. The findings upon which the issuance of a license is predicated have been extended to include financial responsibility and non-violation of the Bucket Shop Act. Heretofore, both of these items have been dealt with indirectly under the guise of fraudulent transactions. Thus, it has been presumed to be fraudulent for a broker to carry on business while in an insolvent condition, and the only way in which a violation of the Bucket Shop Act could serve as the basis for a denial or revocation has been to show the commission of a fraudulent act, and in some instances a reflection upon good business repute.

Under the old act a considerable number of applicants for licenses have been necessarily denied licenses due to a record showing a minor violation of the Corporate Securities Act or the commission of a fraudulent act, however trivial. The new act authorizes the Commissioner, in his discretion to waive these grounds if such grounds do not substantially affect the applicant's honesty and integrity, and will not interfere with the proper performance of his duties as a broker or agent.

As a means of suspending operations of brokers or agents pending an investigation, it was sought to authorize the Commissioner to suspend such licenses temporarily upon suspicion that a ground for revocation existed. This, however, was disallowed by the legislature, and Section 7 now requires a hearing upon notice before a suspension can be entered. The requirement of such hearing renders the suspension power of little value, as the findings at such hearing will support a revocation if they will support a suspension. The chief difference is that suspension is discretionary, while revocation is mandatory if grounds for denial are found, except that discretion is allowed, as above set forth, upon the issuance of licenses. I believe, as a matter of fact, that the distinction just quoted will have little effect, for the reason that if sufficient grounds for either suspension or revocation are found, the Commissioner must revoke, subject to the two exceptions above noted.

INSTALLMENT PURCHASE CONTRACTS

(j) Section 8. This is a new section specifically requiring the approval of the Commissioner before any installment purchase contract can be used. This is an important item of jurisdiction as the installment or partial payment contracts have in the past caused the Division a great deal of concern.

(k) Section 9. This is a new section regulating the application for and the issuance of licenses to investment counsel. The provisions are substantially the same as those applicable to brokers and agents, except that investment counsel must show proper qualifications by way of experience and education. A bond is not required. The powers to suspend and revoke investment counsel licenses are identical with those governing suspension and revocation of brokers' and agents' licenses.

RADIO ADVERTISING

(l) Section 10. The section relating to advertising has been extended to include any advertising matter disseminated by radio, telegraph or otherwise. The old act covered only the distribution of printed matter, and consequently did not include radio advertising, which has recently become of so much importance in the marketing of securities.

This section has also required that the name of an officer as well as of the company be subscribed to such advertising matter. The purpose of this is to prevent fraudulent advertising by the use of a name similar to that of some well-known company.

(m) Section 11. The old section relating to the filing of reports by companies authorized to sell securities has been extended to include an important new provision requiring such companies to keep and maintain complete books, records and accounts of sales and disposition of the proceeds thereof.

(n) Section 12. The old act empowered the Commissioner to require reports from brokers relating to the securities sold by them, but did not specifically require the submission of financial statements. This section has been rewritten in a much shorter and broader form, so that the Commissioner may require practically any information he may desire from brokers, the only limitation being that lists of customers must be kept confidential.

(o) Section 13. The power to issue cease and desist orders to brokers has been limited by expressly excepting contracts previously entered into for the sale of securities. It has been extended by including the manner or method of sale, as well as the sale itself. This extension is made for the purpose of enabling the Commissioner to control directly the use of tipster sheets, boiler-room and switching methods.

VOIDABLE SECURITIES

(p) Section 16. This section takes the place of Section 12 of the old act which rendered void securities sold without a permit or not conforming in their provisions with the provisions required by the permit. Under the new act the word "substantial" has been inserted before the word "conformity," and it is provided that securities sold without a permit or in non-conformity with a permit shall be voidable at the election of the holder. Such provisions standing alone would create no end of trouble, particularly where part of the holders might elect to declare their securities void and the remainder elect to hold their securities, thus making it impossible for the company to refinance or readjust its stock structure. There was added, therefore, a further provision that if written notice of such irregularity is given to the Commissioner he is empowered to issue a permit covering the issuance of such securities as of the date and in the manner of their actual issuance, in which event the holder of such securities loses his right to declare them void. This is the only nunc pro tunc power vested in

the Commissioner and will, no doubt, provoke considerable discussion.

Injunction Suits Permitted

(q) Section 19. This is a new section and is, perhaps, the most important of all the amendments. It expressly authorizes the Commissioner, in the name of the people, to file injunction suits against any person, partnership, corporation or company which has violated or is about to violate any provision of the act, or any order, license, permit, decision, demand, or requirement of the Commissioner. Preliminary as well as final injunctions are authorized.

(r) Section 20. This is also a new section concerning the relationship between the Commissioner and the various district attorneys. Heretofore the Commissioner has made reports of violations to district attorneys upon his own initiative and without express authority. He is now empowered to certify such matters to the district attorneys, who must either act or report the reasons for their nonaction within ninety days. This section should result in more prompt prosecution of the violations reported by the Commissioner. In addition, it will enable the Commissioner to report to the Legislature the ratio of successful and unsuccessful prosecutions under the act.

(s) Section 22 authorizes the Commissioner to employ his own attorney.

Commissioner May Take Possession

(t) Section 23. This section deals with the Commissioner's powers with respect to examinations and investigations. Such powers have been substantially broadened by authorizing the Commissioner to take possession of and place a keeper in charge of all the books, records, accounts and other papers of any company, broker, agent, or investment counsel under investigation. This possession shall be absolute for a period of thirty days, provided that clerks and employees will be entitled to make entries reflecting routine business.

(u) Section 26. This provision has been enlarged to provide for a $25.00 filing fee for applications for investment counsel certificates.

The filing fee applicable to amendments to permits has been extended to cover amendments to mortgages, deeds of trusts, indentures, or other instruments under which securities have been authorized to be issued.

New Filing Fee

There is a new provision requiring a filing fee of $25.00 on application for approval for trading. This should result in a substantial increase in revenue, particularly in the San Francisco district. Up to the present time the Division has performed this service free of charge, although it has required much more detailed consideration than is given the average closed permit.

(v) Section 33. The provisions relative to preorganizaton subscriptions contained in Section 25 of the old act applied only to domestic corporations. These provisions have now been extended to foreign as well as domestic corporations. Under the new act it is no longer necessary that such subscriptions be set forth in the articles of incorporation, nor is it necessary that the president shall be one of the directors or trustees named in the articles.

(w) Section 26 of the old act, providing for the continuance in force of the Investment Companies Act, has been repealed by omission, and the Investment Companies Act, as such, has been repealed by the Legislature, it being Senate Bill No. 702. This clears up the confusion that has long existed because of this act and the Corporate Securities Act both being on the statute books.

(x) Section 35. This is a new section authorizing the Commissioner to consent to the amendment or abrogation of any covenants, agreements, conditions, or provisions of securing instruments where the owners of the securities involved have given their consent pursuant to the provisions of such securing instrument. The purpose of this section is to enable the Commissioner to clear up difficult situations arising from necessary changes in secured issue set-ups.

Attorneys' Responsibility

Attorneys should bear in mind, however, that the responsibility for the administration of the Corporate Securities Act rests as much upon them as upon the Commissioner. The rules and regulations that have been laid down for the administration of the act have been evolved out of a series of economic experiences and for that reason it is as much the duty of an attorney to urge upon his client the strict necessity of conforming to departmental regulation, and pointing out to clients the economic and social necessity therefor, as it is to urge a deviation from these rules upon the Commissioner because of the circumstances of a particular case.

The New Corporate Securities Act

ANALYSIS OF REVISION BY SENATE BILL 701, AS PREPARED BY COMMITTEE APPOINTED BY PRESIDENT OF LOS ANGELES BAR ASSOCIATION TO CONFER WITH THE CORPORATION DIVISION ON AMENDMENTS TO THE ACT

THE BULLETIN is able to present in this issue two articles on the Corporate Securities Act as revised, one by Commissioner of Corporations Raymond L. Haight, the other by a special committee of members of the Los Angeles Bar Association, appointed by President Walker to confer with the Corporation Division on the various amendments to the Corporate Securities Act, proposed to the 1931 Legislature. This committee is composed of Earl Adams, Homer D. Crotty, Harry L. Dunn, and Paul Fussell. The explanations of the changes in the law, and the reasons therefor, are thus presented from two viewpoints. THE BULLETIN believes that both should be printed for the information and guidance of the lawyers of Los Angeles County.

The much amended Corporate Securities Act[1] was again thoroughly revised in 1931 by Senate Bill 701. This Act, sponsored by the Hon. Raymond L. Haight, Corporation Commissioner, was signed by the Governor on May 26, 1931 and becomes effective August 14, 1931. As now revised the Act contains thirty-seven sections, whereas the Act as it was after the 1929 amendments, contained but twenty-nine sections. So thoroughgoing was the revision of 1931 that only ten sections of the old Act remain unchanged in language.[2]

The 1931 amendments change the old law in many vital respects, and in general the subject matter of the amendments may be grouped as follows: (a) authority to secure injunctions and to issue, cease and desist orders, (b) greater control over activities of brokers, (c) measures looking to greater efficiency in the administration of the act, and (d) measures designed to remove or to remedy unnecessary or harsh features of the old law.

Of outstanding importance is the enactment of new Section 19 giving the Commissioner the right to apply for injunctions whenever he believes from evidence satisfactory to him that there either has been or will be a violation of the Corporate Securities Act or of a permit issued by him. For years the Commissioner's office has been criticized for doing nothing after a permit has been violated except to revoke the permit or to appeal to the District Attorney's office. The Commissioner's reply to this was that his office is not a prosecuting body and that the Act did not give him the power to enjoin violations. The new provisions incorporate many of the features of the Martin Fraud Act of New York, and should prove most effective in the prevention of fraud in the sale of securities. Additional aid to the Commissioner's office in the prevention of fraud or of threatened violations of the Act is the power given by Section 5 to issue "cease and desist" orders.

DISTRICT ATTORNEY REQUIRED TO ACT

After the discovery of a fraud or of a criminal violation of the Corporate Securities Act, the Commissioner has complained that it is not always possible to get quick action or even any action from the office of the District Attorneys of many of the counties in this state where such violations have occurred. With a view to remedying this situation there has been incorporated in the new act[3] a provision to the effect that if the Commissioner deems it of public importance or advantage, he may certify a record of the acts complained of to the District Attorney of the county in which the acts

1. Stats. 1917, p. 673; amended by Stats. 1919, p. 231; Stats. 1921, pp. 1008, 1114; Stats. 1923, p. 87; Stats. 1925, p. 962; Stats. 1927, p. 787; Stats. 1929, pp. 1251, 1393, 1892; Stats. 1931, ch. 423.

2. These sections are 1, 10, 13, 21, 22, 23, 24, 27, 28 and 29 of the Act as it was before the 1931 amendments. These same sections are now renumbered as Sections 1, 14, 17, 28, 29, 30, 31, 34, 36 and 37 respectively.

3. Section 20.

complained of occurred. Within ninety days thereafter, the District Attorney must file a written statement at the Sacramento office of the Commissioner setting forth the action taken, or if no action has been taken, the reasons for such non-action. Thus it seems that this section enables the Commissioner to pass the responsibility for prosecutions to the District Attorney's office, where it properly belongs.

"Investment Counsel" Defined

A feature appearing in the Act for the first time is the regulation of "investment counsel." The definition of investment counsel, appearing in Section 2 of the Act is very broad indeed, and includes every person, other than a broker, who for compensation engages in the business of advising others as to the value of securities or as to the advisability of investing in or purchasing securities and also every person, other than a broker or a certified public accountant, who issues or promulgates analyses or issues reports covering securities. Practicing attorneys who render such service in connection with law practice are exempt. Section 9 of the Act outlines the procedure to obtain a license as investment counsel, and also procedure for the revocation of this license and other related matters. Compelled to find some measure to prevent those who either could not or would not obtain a broker's license, or indeed certain brokers whose licenses were revoked, from engaging in all of the practices and privileges of the calling of a broker, except actually executing the orders for the purchase and sale of securities, under the guise of "investment counsel," the Commissioner's office was inspired to recommend the new regulation. Because of the breadth of the definition, it is likely that many others than the parties against whom the measure is directed will come afoul of the law.

Control of books and records of a broker, investment counsel, or company, which the Commissioner has reason to believe has violated or is about to violate the provisions of the Corporate Securities Act is authorized in Section 23 of the Act. This section permits the Commissioner to place a custodian in charge of the records for a period not exceeding thirty days while he is making his examination. In the past, the Commissioner's office has found in a number of instances when demand was made for the production of records, that the records mysteriously disappeared in the night. The Commissioner can now first seize the records and then investigate.

Advisory Opinions

Among the provisions designed to help the administration of the Act is that providing for the employment of counsel[4] to render advisory opinions and to represent the Commissioner in litigation. Unfortunately, due to the smallness of the compensation provided, and to the volume of business which such counsel will be expected to handle, it is doubtful whether this provision will accomplish the excellent purpose the Commissioner has in mind.

A new branch office of the Corporation Division has been created for the City of San Diego and should be welcomed by the bar in that city.[5]

The provisions relating to the approval of advertising have been broadened to include "oral" advertising and advertising of securities by radio.[6] Circulars and prospectuses must bear the name of a company officer or the name of the broker. This is designed to halt anonymous newspaper advertising and the telephone "follow-up" with which the public is familiar.

Among other provisions which affect brokers are those requiring the approval of installment purchase contracts.[7] The broker's bonds must cover faithful performance of his installment contracts.[8] A hearing, with such notice as the Commissioner shall deem reasonable, is required before a broker's license is revoked.[9] Section 7 also permits the restoring of a broker's license in the Commissioner's discretion, even if the broker or some of his agents or officers have been guilty of a violation of the Bucket Shop Act[10] or have been guilty of fraudulent transactions, if the Commissioner is satisfied that such violation has been of a technical character or that it does not substantially affect the broker's honesty or integrity. Heretofore, such conduct would have barred the restoration of the license.

Pre-Organization Subscription

A number of amendments designed to remove unnecessary or harsh features of the old law have been adopted. One of these

4. Section 22.
5. Section 25.
6. Section 10.
7. Section 8.
8. Section 6.
9. Section 7.
10. Stats. 1923, p. 449.

is the elimination of the old provision relating to preorganization subscriptions. The new Act[11] permits the taking of preorganization subscriptions both of foreign and domestic corporations without first securing the authorization of the Commissoner, provided no collections are made on these subscriptions, and provided also that the corporation is organized within ninety days after the taking of subscriptions and applies for a permit with reasonable diligence thereafter. This change lessens somewhat the difficulties presented in the Act by the retention of the prohibitions against negotiating for the sale of securities. Some day, it is hoped, the word "negotiate" and provisions against "negotiating" may be eliminated from the Act, for of all its provisions none is more uncertain in application.

The Most Important Amendment

By far the most important amendment to the new Act from the standpoint of security-holders is Section 16. This section clarifies certain language appearing in Section 12 of the old act, and renders the securities hereafter issued without a permit or not in substantial compliance with the terms of the permit merely voidable instead of void. The security-holder is given the election to determine whether he will have his securities voided, unless the Commissioner within sixty days after written notice of the irregularity issue a permit authorizing the issuance of such securities in the manner of their actual issuance. The section further provides;

> "If said permit is issued within said time none of said securities shall be voidable by reason of being issued without permit or by reason of being issued otherwise than in conformity with the terms of the original permit."

The old section was intended to penalize the crooks, but in its operation it has led to situations where the public has been left holding the sack. Certainly such a case as Klinker v. Guaranty Title Company[12] was never contemplated by the draftsman of the old provision. In that case the plaintiffs had bought certificates of stock of the defendant company paying cash for them. About two years after the issuance of the certificates the defendant company on discovering a violation of the Act, brought an action to cancel the certificates and after a year's litigation secured the cancellation of the certificates. Thereafter the plaintiffs brought this action to recover the consideration paid for the stock, only to be met with the defence of the Statute of Limitations. It is hoped that the new Section 16 will operate to remedy such situations and so prevent rank injustice.

Other provisions of the act of interest to the bar provide for the exemption of deposit receipts issued under a bondholders' or noteholders' deposit agreement from the provisions of the Act.[13] The Attorney General has given an opinion that no permit was necessary.[14] The new Act also[15] empowers the Commissioner to give his consent to the modification of trust indentures and mortgages where such instruments permit his consent, and where he believes the modification to be fair, just and equitable. The exemption relating to sales of personally owned securities has been further clarified.[16]

Becomes Strictest Regulatory Act

With the adoption of the new amendments the California Corporate Securities Act has undoubtedly become one of the strictest regulatory acts in the United States. The new Act controls securities from three major standpoints: (a) control over the issuance by companies of their own securities, (b) control over brokers in the sale of securities both where the securities have been authorized to be issued by the Commissioner, and where in the case of certain non-exempt out-of-state securities approval for trading under the Corporation Division's Rule 26 is required, and (c) injunctive relief or other summary relief against threatened violations of the Act or of permits issued by the Commissioner. As it has been stated[17] "California must be characterized as the most active and militant state in the regulation of its capital market." Since the most important features of the strongest regulations of all the other states have now been incorporated in the California Act, the administration of the Act should throw a great responsibility on the Commissioner to prevent the issuance of worthless securities, to control brokers and to enjoin violations of the Act on the one

11. Sections 2 and 33.
12. 98 Cal. App. 469, 277 Pac. 177 (1929).
13. Section 2, par. (a), sub. 7.
14. Ruling of the Atty. Gen. June 7, 1930.
15. Section 35.
16. Section 2, par. (c), sub. 3.
17. Dalton, John E. "The California Corporate Securities Act," 18 Cal. L. Rev. 115, 255, 373, at p. 136.

hand, and to administer the Act so that it will not become an intolerable burden on the financial life of the state on the other.

There has been a tendency on the part of the Commissioner's office to act not only in the regulation of corporate securities but also to regulate corporations as such by insisting on changes in the corporate structures (even where the state of incorporation permits such structure) to conform with requirements of the Corporate Division, and also by reason of conditions in permits to continue with the regulation of the corporation's affairs after the permit has been issued. A familiar instance of this type of regulation is the insistence that preferred stock, non-voting at the outset, shall be given the right to elect the majority of the Board of Directors when dividends have been passed for a period of from two to three years. The Commissioner has insisted that preemptive rights to subscribe to new stock be given to stockholders unless expressly waived either in the articles of incorporation or otherwise. This practice was undoubtedly prompted by the fact that since the laws governing California corporations were more limited than those relating to corporations in most other states the Commissioner felt that he should try to have the corporate structure of such foreign corporations applying to sell securities in this state resemble more closely the structure permitted for California corporations.

Corporation Law Revised

At the 1931 session of the legislature, the California corporation law was completely revised. Because of the liberalization of the provisions of the California corporation law relating to stock, stockholders' voting rights and other matters, and since the Corporate Securities Act has greatly strengthened the powers of the Commissioner, it is now assumed and expected that the Commissioner will no longer consider it necessary or appropriate to follow the practice of inserting conditions in permits which have the effect of changing the stock structure of corporations or their methods of managing their internal affairs or of doing business. This practice has always been widely criticized by members of the bar inasmuch as the Corporate Securities Act was intended to give the Commissioner power to regulate the issue and sale of securities and to regulate activities of brokers and was not intended to give any general visitorial or supervisory powers over corporations.

The legislature at its 1931 session repealed certain laws affecting the Corporation Division. The first of these was the repeal of Section 309½ of the Civil Code. By that section distribution of capital assets were permitted on obtaining the permit of the Commissioner so to do, after application to him, and after published notice. In practice this section proved burdensome to corporations wishing to make distribution without being of any real benefit to creditors inasmuch as, so the writers are informed, the objections to such distribution by creditors and others have been almost non-existent. Distributions of capital now can be effected by reduction of capital and the distribution of surplus thus created in accordance with C. C. 348, 348a and 348b of the new corporation law. The second repeal which the bar should find helpful is the repeal of the Investment Companies Act[18] by Senate Bill 702.[19] It will be recalled that section 26 (now repealed) of the old corporate securities act provided that insofar as the Corporate Securities Act did not add to or take from the Investment Companies Act, it should be construed as a continuation of it. The result was to leave a question as to how much of the old law remained, since the provisions of the Corporate Securities Act could not be considered as exclusive in many cases. The legislature therefore did a constructive piece of work in eliminating this bit of dead wood from the law.

Mr. John E. Dalton of the Harvard Graduate School of Business Administration, following the enactment of the 1929 amendments to the Corporate Securities Act, concluded that the administrative duties called for by the California act entailed an expense much greater than that found in states of similar size.[20] In discussing the so-called closed permits he states: "As the Securities Act is administered in California the detailed work in examining the applications for closed permits entails an

18. Stats. 1913, p. 715.
19. Stats. 1931, ch. 802.
20. Op. cit. 18 Cal. L. Rev. 115, 136.
21. Op. cit. p. 265, n. 51.
22. Appropriations for the administration of the Corporation Division made in the last five sessions of the legislature are as follows:
1931 $864,539 Stats. 1931 ch. 183
1929 $727,080 Stats. 1929 p. 88
1927 $696,560 Stats. 1927 p 275
1925 $594,593 Stats. 1925 p. 57
1923 $350,772 Stats. 1923 p. 247.

expense of at least three times that in other large states."[21] By far the larger part of this expense is borne by the applicants for permits. The expense of the administration has been steadily increasing and with the new powers and duties given the Corporation Division in the new Act, the costs of administration should mount still higher.[22] It is the belief of the writers that the regulation of the issuance of securities and of brokers as well as the prevention of violations of the Act are most essential. Such regulation, however, should be kept in channels where the likelihood of fraud and damage to investors exists and should be eliminated where, in the experience of administrators, the probability of fraud and damage is small. Several exemptions from regulation might well be taken from the Uniform Sale of Securities Act for adoption in California.[23] In many states, securities which have been admitted for trading on stock exchanges having strict regulations as to listing and as to character of companies, such as the New York Stock Exchange and others, have been exempted from the operation of the securities acts. Here, however, care should be exercised not to permit exemption of securities listed on exchanges where the requirements of listing are lax. Securities issued by corporations organized exclusively for religious, educational, benevolent, fraternal, charitable and reformatory purposes and not for pecuniary profit should be exempt.[24] Stock dividends,[25] securities issued on a bona fide reorganization to stockholders or creditors in pursuance of plans approved in bankruptcy or receivership actions,[26] securities issued on a consolidation or merger of a corporation to security holders of the merging or consolidating corporations,[27] and securities issued in conversion of other securities of the same company,[28] might very well not come within the purview of the Act.

It is highly desirable that research to observe and report upon the operation of security acts in other jurisdictions be made, so that the administration of the corporate securities laws in this state can be made to furnish the maximum protection to investors with the minimum of burden on legitimate business.

EARL ADAMS HOMER D. CROTTY
HARRY L. DUNN PAUL FUSSELL

23. Uniform Laws Vol. 9, 1930 Supp. p. 281.
24. Uniform Sale of Securities Act No. 4 (e).
25. Id. No. 5 (d).
26. Id. No. 5 (d).
27. Id. No. 5 (f).
28. Id. No. 5 (h).

"Irregularities" in Bankruptcy Proceedings

MEMORANDUM OPINION OF JUDGE JAMES IN FERGUSON CASE

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

IN THE MATTER OF
HAROLD G. FERGUSON,
Alleged Bankrupt.

No. 16118—in Bank
MEMORANDUM OPINION ON
MOTION TO DISMISS.

The original petition filed herein set forth that the several creditors named in the petition entered into a contract with the Harold G. Ferguson Corporation and certain "private trusts", whereby certificates of interest in said trusts were to be received by the petitioners in exchange for money which they allege was paid to the Ferguson Corporation and the private trusts; it is alleged that Ferguson Corporation individually, the Ferguson Corporation and two other parties engaged in a conspiracy to defraud petitioners and the public and that petitioners received no consideration for the payment of their monies. The respondent interposed a motion to dismiss the petition, assigning a number of grounds in support thereof.

The petition does not express with sufficient clearness as to how the trusts were organized, whether or not they were separate entities and just what the relationship of the alleged bankrupt herein was towards such trusts. If it was intended to show the improper conversion of the monies of the petitioners in the hands of the alleged bankrupt; or had set forth under sufficient facts pleaded a claim for money had and received, then no doubt the petition might be held sufficient. If the trusts were separate entities, and if as the fact is alleged, the monies of the petitioners were paid to the Ferguson Corporation and the trusts, that state of facts, in my opinion, would not show a present provable claim against Ferguson individual. My conclusion is that the original petition was not sufficient for the reasons stated.

On May 9, 1931, there was filed an intervening petition, the petitioners therein named being Arthur G. Wilson, Jennie Goldenson, L. A. Ladder Company and Harry H. Hyatt. It was alleged in the petition that these creditors had severally sold merchandise to the alleged bankrupt in the following amounts: Wilson, $92.15; Goldenson, $82.08; L. A. Ladder Company, $172.00; Hyatt, $392.32; the total being $738.56. Without the claims of Wilson and Hyatt, the petition would represent an insufficient amount to form the basis of an involuntary petition under the Bankruptcy Act. The alleged bankrupt, by his counsel, objected to the intervening petition being considered, and for present purposes, it may be assumed that the motion to dismiss applies to it, for whether the objections expressed are to deny the filing of the intervening petition or to dismiss it is immaterial. No doubt it is correct, as counsel for the intervening petitioners state, that intervening creditors may as of right file a sufficient petition in a bankruptcy matter.

The objections are that the creditors Wilson and Hyatt neither consented to join in the petition nor did they verify it as the Bankruptcy Act requires. An affidavit on the part of each of said creditors sets forth that they were visited by a man representing himself as one from the law office of Hiram E. Casey, Esq., one of the attorneys for the alleged intervening petitioners, and that while they signed the papers offered, they did not understand that they were joining with other creditors in any bankruptcy proceedings and that it was not their desire so to do. Each of such creditors positively affirms under oath that they did not swear to the statement before any notary public or other person authorized to administer oaths.

Attached to the intervening petitions are separate forms of verifications bearing the signature of Wilson and Hyatt, and bearing the notarial endorsement as follows:

> "Subscribed and sworn to before me this 8th day of May, 1931.
>
> "E. N. Gelberg, Notary Public in and for The County of Los Angeles, State of California."

A notarial seal is impressed opposite the notary's signature.

A most amazing response was made to the affidavits of Wilson and Hyatt in the affidavit of J. I. Siegel. The affiant therein, after declaring that he is an attorney-at-law, duly admitted to practice in the State of California and in the United States Dis-

trict Court, and associated with Samuel S. Gelberg, denies that Hyatt and Wilson were not informed as to the nature of the paper they were signing or that they were not made to understand that it was to be filed in the bankruptcy proceeding. Passing over that matter as one in dispute, we reach a remarkable statement in the affidavit of Siegel. It is as follows:

> "I explained to him (Wilson and Hyatt) also that the affidavit would be notarized by the notary in our office, the form of the affidavit not requiring his presence in person and that I would testify to the signature being his."

The plain fact then appears, without any dispute whatsoever, that Wilson and Hyatt never did take an oath in verification of the facts stated respecting their claims in the involuntary petition and yet such petition was presented to the court with the representation that it had been duly verified as required by the Bankruptcy Act. (Section 18, subdivision c). It is contemplated where verifications are required that willful material mis-statements made by a petitioner may be assigned as perjury. The separate verification of Wilson and Hyatt was no verification at all and was a fraud upon the court when presented in the form it was.

The most amazing of the declarations coming from counsel for the petitioning creditors is found in the affidavit of Julia Baker, presented counter to the objections of the alleged bankrupt to the intervening petition. Julia Baker solemnly swears that she affixed her name, seal and title as notary public to the jurat attached to the verifications made in form to fit Hyatt and Wilson; that she acted upon the advice that the personal presence of the verifying parties was not necessary; that she acted upon the declaration of Mr. Siegel that he had seen Hyatt and Wilson sign the affidavits. The fact has been noted that the name of Julia *Brown* does not appear as the notary before whom the alleged verifications were made, but instead there is the name of E. N. Gelberg on each of the jurats. Hence Julia *Brown's* affidavit must be wholly untrue in that respect.

The judges of this court have of late encountered some very strange and curious things in bankruptcy proceedings but none to equal the situation that is here presented in point of irregularity, to use an exceedingly mild term.

The original involuntary petition and the alleged intervening creditors' petition are dismissed.

WM. P. JAMES,
U. S. District Judge.

NEW MEMBERS OF LOS ANGELES BAR ASSOCIATION

Ronald Abernethy, Lewis W. Andrews, Jr., Charles M. Astle, Walter Barnes, Everett F. Beesley, Abe Benjamin, Vaughn W. Bennett, William Berger, Max Bernstein, Edwin Thiemann Beyer, Percy Morton Bokofsky, Wm. Russell Bolinger, Crawford R. Bonter, A. Noah Borah, E. N. Braag, Mandel Brasler, H. Eugene Breitenbach, Harold C. Brown, Joseph L. Carr, Joseph Lippman Cohn, E. Werden Conway, Gerald A. Coxe, Reginald S. Craig, Vernon H. Cress, Hugh Culler, Arthur A. Desser, Henry H. Draeger, Joseph Duchowny, Harold L. Duckett, Jr., Theodore J. Elias, Burton F. Ellis, Oscar Sigert Elvrum, Walter H. Fike, Oral R. Finch, U. Richard Gerecht, B. E. Gigas, W. I. Gilbert, Jr., Tom L. Glenn, Jr., Louis Gorelick, Benjamin Gould, Richard Lemoyne Gray, L. W. Green, Russell D. Hardy, Victor J. Hayek, John M. Hiatt, Austin D. Horn, Gareth Wesley Houk, J. Leman Houseworth, Leon K. Jonas, Gerald Edward Kerrin, John Koberle, Frederick M. Kraft, Georgia M. Kramre, Rex W. Kramer, Steiner A. Larsen, J. J. Leake, J. Miller Leavy, Moses E. Lewis, Jr., C. Roger Liljestrom, Herbert J. Lindstrum, Helen Lee MacKellar, Aileen M. MacLymont, Frederick I. Marlin, Homer L. Martin, Clifford Henry Maurice, Arthur McGregor, Gregory Louis Meis, Arthur Carlton Miller, Walter H. Miller, Edward E. Mitchell, C. Paul Monningh, T. Paul Moody, Bernice Morris, Frank Gordon Munroe, John Russell Myers, Gilbert Frnacis Nelson, A. Edward Nichols, Edmund Nichols, Jr., Norman A. Obrand, Oscar B. Olsen, Richard C. Olson, Benjamin F. Parsons, E. E. Petree, Scott Poffenberg, George H. Pratt, Harriett E. Rowan, I. Charles Rubin, Donald E. Ruppe, Samuel Schwartz, George C. Schweickert, R. Leslie Sparks, Katherine Spengler, William S. Sprague, Lucius Donald St. Clair, Hugh H. Sullivan, Charles D. Thompson, John P. Tobin, N. T. Ulvestad, B. W. Vinetz, Chas. R. Vorck, Cornelius T. Waldo, Henry L. Walleck, Harrison Weil, Ralph L. Welsh, Leo G. Whitaker, S. Earl Wright, Carol G. Wynn, Christopher Griffin, J. W. Mullin, Jr., Laurence A. Peters, Wallace W. Toelle.

The State Bar and Its Critics

A CLEAR AND CONCISE ANALYSIS OF THE SOURCE OF THE CRITICISM. RECORD OF ACCOMPLISHMENT OF THE STATE BAR DISCUSSED

By Charles A. Beardsley, former President of California State Bar

It will be my purpose to set forth a classification of criticisms of the State Bar, together with some observations in reference thereto.

Recently the Detroit News sent Mr. A. M. Smith, a member of its editorial staff, to California to investigate the operation of the State Bar. In one of the ten articles that that paper published setting forth the results of Mr. Smith's investigations, he dealt with criticisms of the State Bar. He mentioned three classes of criticism as comprising "the only criticism of the movement that we could find in the length and breadth of California," and concluded with this paragraph:

"On the other hand, there is an overwhelming body of opinion from members of the bench and bar generally, from business and press, favoring the movement."

In this classification of criticism of the State Bar, I shall use the three classes listed by Mr. Smith, and shall add a fourth class, and a fifth class.

His first class is "the very considerable body of opposition and criticism" coming from attorneys who have been disciplined since the State Bar began to function. There might well be included in this class the criticism from those who have not actually been disciplined, but who object to the maintenance of ethical standards, and who are in effect candidates for discipline.

Probably criticism of this first class will continue as long as the State Bar disciplinary machinery operates effectively. It is too much to expect that attorneys who are disciplined or who are candidates for discipline should ever whole-heartedly approve of effective disciplinary machinery.

THIS CAUTIOUS AGE

Never say a thing except
By advice of counsel;
Fortunes have been made and kept
By advice of counsel.
When the one that you revere
Says, "Make your intentions clear"
Only say "I love you dear"
By advice of counsel.

Only answer "No," or "Yes,"
By advice of counsel;
Never beat your wife unless
By advice of counsel.
Never spurn a touch of tact,
Courts are crowded, jails are packed
With the fools who didn't act
By advice of counsel.

Disciplinary Method

The disciplinary method of the State Bar combines an effectiveness with the highest possible degree of protection to the reputation of the attorney who is wrongfully accused. It is the best method yet devised; and it is but fair to assume that, if and when a better method is devised that is permissible under the terms of the State Bar Act, the board of governors will substitute it for the method now in use.

Mr. Smith's second class is the criticism of the State Bar for the alleged short-comings of the Judicial Council. He quotes a discussion between himself and one of these critics, concluding with the observation that "it seemed unwise to pursue the topic to the embarrassing disillusionment of this critic."

Criticism of this second class will disappear in the course of time, as the members of the profession become better informed as to the respective functions and activities of the State Bar and of the Judicial Council, and as to the constructive service of both to the profession and to the public.

Mr. Smith's third and final class of criticism came from those "whose standing is unquestionably high and whose sincerity cannot be doubted," but who object on theoretical grounds to the self-governing features of the State Bar Act.

While criticism of this class may not entirely disappear, it is to be hoped that those who thus disapprove on theoretical grounds will in time become convinced by the increasing evidence that our State Bar

Act provides the most effective instrumentality yet devised for improving not only the status of the bar but also the quality of the service that it renders to its clients, to the courts and to the public.

Legislative Attacks

There is a fourth class of criticism, not mentioned by Mr. Smith, which was conspicuously evidenced by a publication mailed to all members of the bar during the recent session of the Legislature.

This criticism was not of the State Bar as such; it was not based upon the theory that the State Bar was not a good thing or that we should return to the condition existing prior to the State Bar Act. Impliedly at least it admitted the soundness of the State Bar idea, and the effectiveness of the integrated bar. It was a criticism of the board of governors, because of what they have done and left undone, and because of who they are.

This publication advocated the enactment of certain legislation, and criticized the members of the board because they had not advocated the enactment of the same legislation. This proposed legislation included bills to invalidate all State Bar disciplinary procedure, to require two verified accusations (one filed in court and one filed with the State Bar) as a condition precedent to a State Bar investigation of an attorney's misconduct, to legalize ambulance chasing as long as the chaser is a duly licensed attorney, to take all State Bar funds out of the State Bar treasury and to pay them into the state treasury, to make members of the board of governors subject to recall, and to make all recommendations for admission, disbarment, suspension and reinstatement and all other acts of the board and of all committees, subject to referendum.

Criticism Unjustified

Obviously this criticism was entirely without any justification; this legislation was calculated to cripple the State Bar, and, even if there were a chance for a difference of opinion as to the merits of this legislation, the members of the board were entitled to entertain their opinions just as certainly as were the authors of this publication entitled to entertain theirs; and the members of the board had a better right to speak for the entire bar, whose duly elected representatives they were.

This publication also criticized the board of governors because some members of the board, both past and present, had been and are in possession of retainers from banks and from liability insurance companies. The authors of these criticisms did not expressly state whether or not, if such retainers should be offered to them, they would refuse them.

The same publication also criticized the board of governors because it had not made greater progress in solving the lay encroachment problem. The problem has not been entirely solved in any state in the union; many members of the bar throughout the country are trying to work out a solution. Both the efforts made, and the results attained, in California will compare favorably with those in most of the other states. The board of governors is endeavoring to work out a solution; and it would appear that more good is being accomplished by the members of the board, and by those who are cooperating with them, than by those whose sole contribution consists of criticisms of the board of governors.

Voluntary Bar Organization not Needed

The same members of the bar who sent out the above mentioned publication apparently advocated the formation of a state wide voluntary lawyers' association. When the State Bar was organized the California Bar Association was disbanded, for the reason that the organization of the State Bar, comprising and controlled by all of the members of the bar, left no place for a voluntary state wide organization attempting to exercise a portion of the functions of the State Bar, or supervising the operations of the State Bar. The same reasoning would appear to demonstrate the lack of justification for the proposed organization. In any event, it would appear certain that there is no proper place in California for any voluntary bar organization, —state wide or otherwise, that has for its purpose the criticism or supervision of, or dictation to, the representatives of all of the members of the bar duly elected to and acting upon the board of governors.

This fourth class of criticism has a tendency to hamper the members of the board, to divert their attention from the accomplishment of the purposes for which they were elected, and to defeat the will of the majority as expressed in the State Bar elections. If mistakes are made in one election, there is plenty of opportunity to remedy them in the next. For the terms for which they are elected, the members of the board

of governors are entitled to the support and cooperation of each and every member of the bar, whose duly elected representatives they are. And the members of the board of governors have the whole-hearted support and cooperation of the great majority of the members of the California bar.

It would appear that there is no proper justification for this fourth class of criticism.

There is a fifth class of critics of the activities of the State Bar. They see in the last three and one-half years in California a record of accomplishment by and within the legal profession that is without an equal anywhere during a like period of time.

Record of Accomplishment

In three and one-half years the number of the members of the bar that are giving any serious attention to the problems and responsibilities of the profession as a whole, to the obligations of the profession to the courts and to the public and to the individual members of the profession, has increased ten-fold.

The intellectual resources of the bar as a whole have been mobilized and directed toward the improvement of the administration of justice, the improvement of our procedural laws, and the modernization of our corporation laws.

There has been effected a marked improvement in conditions surrounding admission to the bar.

Definite and reasonable rules of professional conduct have been adpoted and enforced.

Disciplinary procedure that is both effective and fair has been adopted and put into operation, as a result of which many of the morally unfit have been eliminated.

The bar has become more worthy of respect and more respected. This increase in respect is evidenced by the attitude of the Legislature, of the press, and of the public generally.

The representatives of this fifth class of critics are fully aware of the accomplishments of the State Bar. But they have not been entirely satisfied with these accomplishments; they have been critical of those accomplishments; they are trying to find a better way to do that which is being done; they are trying to make the State Bar still more effective as an instrumentality that is serving the bar, the courts and the public, an instrumentality that is not only serving them well, but that is serving them better than they have been served by any other form of bar organization yet devised.

This fifth class comprises the great majority of the critics of the State Bar. It comprises all or substantially all of the present and past members of the board of governors, of the committeemen and individual State Bar workers throughout the state, and the great majority of the members of the local bar associations. They are endeavoring through constructive criticism and personal service to improve the quality, and to increase the number, of State Bar accomplishments.

Criticisms of the first four classes are simply incidents of an outstanding progressive movement; they can hamper the movement, but they cannot entirely stop its progress.

Criticism of the fifth class will continue indefinitely; and, as long as it continues, progress will continue. It will supply its own answer to its criticism; and that answer will be a better State Bar, a better qualified and more respected legal profession, and a better administration of justice.

Schedule of Principles

By Howard T. Mitchell, A.B., LL.B.
Member of Los Angeles Bar Association

"In announcing myself as a candidate for governor of the State Bar for the Los Angeles districts nine and ten, I do so solely in passion to serve my profession, and in the hope I may assist in raising it to higher plane of service for the public good.

"Selecting a governor of the State Bar should not be the choice of personalities. This is not a popularity contest. Your candidate should inform you what he stands for. Otherwise how will you know his position? Your selection should depend upon the test of principles of the most profound conception. The fundamental doctrine upon which I base the principles I propose is that the position of the State Bar of California, as to legal and judicial reform, should be one of LEADERSHIP. To clarify the issues of this election contest, I announce the Schedule of Principles upon which I stand.

1. LEADERSHIP, not only in changes in remedial measures, but also in the substantive law. If a substantive law is wrong, a multitude of remedial measures will accomplish little.

2. Court costs in general should be reduced. Jury and court reporter fees should be provided out of the general tax fund. The doctrine of the "spirit of justice" should be recognized, and less weight given legal precedent.

3. The State Bar should sponsor a legislative program which will bring some genuine protection to the bar, for:

(a) The bar needs and must have an attorney's lien law. Many of our attorneys have been defrauded out of their fees after rendering faithful and valuable professional services.

(b) The bar also needs an act which defines the practice of law in a broad and comprehensive way. The thoughtful lawyer knows why.

4. The bar needs to sell itself to the public. I therefore favor a state-wide educational campaign to inform the public what the function of a lawyer is in society and what valuable services he is capable of rendering.

5. I have confidence in the intelligence and integrity of the members of the State Bar, and therefore favor a membership plebiscite on matters of policy, and upon those fundamental functions not administrative or executive in character. The State Bar should be self-governing in fact.

6. I favor a *minimum* fee schedule, whether state or county in scope, promulgated and enforced by the State Bar. This is to eliminate unfair and cut-throat competition.

7. Admission on motion should be discontinued in order not to discriminate against the California-educated lawyer, that is our own sons, and daughters.

8. I believe in high professional standards, and favor raising them, to give us better equipped lawyers and a resulting higher character of public service.

9. Admission to the bar of California should be restricted to the needs of the profession, regardless of other considerations. The rights of those in practice are superior to those not yet admitted.

10. I favor a sincere, and militant prosecution by the State Bar of those outside the profession for the unlawful practice of the law. This is the most important and urgent work of the State Bar, and merits immediate and diligent action that will bring prompt results. Let us dispose of the bears before we flay the mice.

Your vote should be independent of group control. May your choice be determined by principle.

The above announcement has been accepted as an advertisement and the publication thereof constitutes neither approval nor disapproval of any candidate or candidates.

The Bulletin Committee of the Los Angeles Bar Association.

Unlawful Practice of the Law

LOS ANGELES BAR ASSOCIATION TAKES ACTION IN MANY CASES. THE RESULTS OBTAINED

During the nine months last past, the Committee on Unlawful Practice of the Law of the Los Angeles Bar Association has given consideration to *ninety-four* cases brought to its attention.

In order that the members of the Los Angeles Bar may be made acquainted with the activities of this Committee, the volume of work performed, and its method of procedure, THE BULLETIN presents a graph, with explanatory notes, showing the classification of the complaints, the number in each classification, and the disposition made of them.

1. Parties practicing by giving legal advice and counsel in the preparation of legal instruments and contracts by which legal rights were secured—with reference to various matters not more specifically classified by this compilation.

A	B	C	D	E	F	G	H	I	J	
5	16	5	0	5	I	2	1	4	3	Total 42

2. Notaries Public, Real Estate Men, Etc.

A	B	C	D	E	F	G	H	I	J	
0	4	0	0	0	0	2	1	2	0	Total 9

3. Collection Agencies, usually operating under trade names, such as Blank Creditors' Association, etc.

A	B	C	D	E	F	G	H	I	J	
0	2	0	0	1	0	0	0	4	0	Total 7

4. So-called Service Bureaus, Pseudo Business Mens' Associations, Corporation Service Companies, etc.

A	B	C	D	E	F	G	H	I	J	
1	5	1	2	0	2	3	2	8	2	Total 26

5. Individuals and so-called associations soliciting claims and powers of attorney in bankruptcy matters.

A	B	C	D	E	F	G	H	I	J	
1	0	0	0	0	0	0	0	3	0	Total 4

6. Corporations and Parties operating under Trade-Names.

A	B	C	D	E	F	G	H	I	J	
0	3	0	1	0	0	1	0	1	0	Total 6

Grand Total:

A	B	C	D	E	F	G	H	I	J	
7	30	6	3	6	3	8	4	22	5	Total 94

EXPLANATORY NOTES

(A) Party discontinued his operations and could not be found after the complaint was received.

(B) The acts complained of would not in the opinion of the Committee support an action.

(C) The respondent agreed to eliminate from the conduct of his business the objectionable practice complained of.

(D) The respondent discontinued his business after the committee advised him in the premises.

(E) Hearing was held in the City Prosecutor's Office and adequate assurances were given that the practice would be discontinued.

(F) Prosecutions were had in Court.

(G) Party appeared before the Committee and assurances were given the Committee, in writing, that the objectionable practice would be discontinued.

(H) Case pending in City Prosecutor's Office.

(I) Case pending with the Committee.

(J) The statute of limitation had run either before the matter had reached the Committee or immediately after it reached the Committee.

The Procedure Followed

Upon receipt of a complaint, The Bar Association Office refers it to the committee, and the committee determines whether or not the acts complained of consist of unlawful practice. If the facts in the complaint give evidence of unlawful practice and are sufficiently substantiated by the file, and the party complained of is not a "repeater," he is called before the committee, or the Chairman or Vice-Chairman, and is informed that unless such practice is discontinued he will be subjected to prosecution. If the party agrees to discontinue the practice he is requested to so indicate by a written communication to the committee, and the file is thereupon forwarded to the Board of Trustees with the recommendation that the matter be placed in file and that no further action be taken unless additional complaints are received. After a reasonable time has passed, an investigation is made to determine whether the party is abiding by his assurances made to the committee.

If the matter is one which gives evidence, either by the file or from an investigation conducted by a paid investigator, that the offender is knowingly and wilfully practicing unlawfully, the matter is referred by the Committee to the Board of Trustees, and in turn the City Prosecutor with the request that a complaint be issued. These complaints are prosecuted either by the City Prosecutor's Office or by a member designated by the Board of Trustees.

In some instances the office of the City Prosecutor has been able to bring about the desired result by issuing summonses and holding hearings in his office. Other cases were taken by the City Prosecutor's Office directly to Court.

Committee Has Not Sought Publicity

In the September, 1930 issue of The Bulletin, Mr. Chandler P. Ward, Chairman of the 1929 and 1930 Committees on Unlawful Practices, in an article on this subject stated:

> "It has never been the policy of the Association to give publicity to such matters in the cosmopolitan press. This information is conveyed to you in order to acquaint you with the activity of this Committee of the Association."

The Committee reiterates the statement made by Mr. Ward. It may also be said that the Association has always followed a policy of seeking to STOP the unlawful practice rather than to follow a policy or desire to *prosecute* wherever and whenever possible. While the Association has not hesitated to institute a prosecution whenever it was felt necessary, it has nevertheless found effective and satisfactory means of stopping such practices in many instances without resorting to prosecution.

The number of complaints is constantly growing relatively smaller. This is no doubt due, to some extent at least, to the activities of the committee. This committee has jurisdiction of matters involving laymen, corporations, etc., other than Banks and Trust Companies. President Walker, on June 1st, 1931, appointed a Special Committee on Banks and Trust Companies, and the Committee on Illegal Practice takes cognizance of the comparatively few complaints alleging that Attorneys are practicing in an illegal manner.

Bankruptcy Matters

There is, however, one particular class of unlawful practice which seems to be growing. Namely "Ambulance chasing in bankruptcy matters." As soon as a bankruptcy schedule is filed certain persons and so-called organizations copy the creditor's lists and solicit the creditors both by letter and in person. In many instances these persons have no interest in the case as a creditor but solicit in an effort to obtain the creditors' claims and power of attorney for voting purposes, apparently with no other object than to control the estate and to obtain fees and commissions as receivers and trustees. When such persons are successful the result is that the estate is administered by persons who have no real interest in it. There are many important angles to this evil and these are having the careful attention of the Committee and will be fully dealt with in the near future.

The personnel of the Committee on Unlawful Practice of the Law is as follows:

J. W. McKinley, *Chairman*
John W. Maltman, *Vice Ch.*
J. Marion Wright
James W. Morin
John W. Barnes
D. S. Hammack
Eugene Tincher
Moe M. Fogel
Mark L. Herron
Gretchen Wellman
H. C. Mabry
Thos. Hart Kennedy

Norbert Savay

of the Los Angeles Bar

Norbert Savay, of the Los Angeles Bar, announces his candidacy for the State Bar Board of Governors, office-at-large that will be vacated by the expiration of President Leonard Slosson's term.

SAVAY'S PLATFORM

"I believe that the State Bar should energetically concern itself with measures calculated to so expedite the work of our courts as to avoid the interminable delays that cause such widespread discontent with our judicial system. If elected to the Board of Governors I would vigorously advocate that the influence of the State Bar be placed behind a program effective enough to bring our court calendars up to date and keep them up to date.

"I am convinced that it is a duty of first magnitude of the State Bar to take such proceedings as are necessary to put a stop to the unlawful practices of the law by corporations as well as by individuals, and to protect the legal profession as well as the public from such unlawful practices.

"I believe that no member of the legal profession should be subjected to the humiliating experience of an examination concerning his professional conduct, except upon written complaint sworn to by the complainant. The attorneys are entitled to the same consideration and protection of their character and standing as other citizens and any proceedings against a member of the State Bar should certainly be based upon and dignified by a sworn accusation. The accused attorney would thereby be afforded protection in the event that such accusations were found to be utterly false.

"I hold that it is as much a duty of the State Bar to protect the interests of its members as to protect the interests of the public.

"I believe in democratization of the State Bar; that the work of the State Bar should be in contact with the thought and will of the average practitioner throughout the state of California; that the State Bar should seek and obtain the advantages to be derived from co-operation with legal organizations and associations throughout the State of California.

"I believe in a democratic State Bar in which no discrimination is made between the attorney who has attained a position of wealth and influence and the attorney whose feet are still upon the first rung of the ladder.

"Above all else, I pledge myself to the principle of equal rights in our profession, and if elected I shall strive diligently, aggressively and fearlessly to serve the interests of the entire Bar of the State of California.

"I am not affiliated professionally or otherwise with any Trust Co., Insurance Co., or any organization or individual concerned in the unlawful practice of the law.

"Studied law at Yale and Notre Dame; have been in practice for about 28 years, of which about 4 were spent in San Francisco, 17 in New York City, and the balance in Los Angeles. For the last 15 years I have been specializing as General Trial Counsel, author of books and writings on legal subjects, including the "Art of the Trial."

All my life I have been fighting for the "underdog."

NORBERT SAVAY.

The above announcement has been accepted as an advertisement and the publication thereof constitutes neither approval nor disapproval of any candidate or candidates.

The Bulletin Committee of the Los Angeles Bar Association.

Los Angeles Bar Association Investigates Lawless Enforcement of the Law

CONSTITUTIONAL RIGHTS COMMITTEE MAKES STARTLING REPORT ON ALLEGED ILLEGAL ENFORCEMENT IN CONNECTION WITH DEPORTATION OF ALIENS

A Sub-Committee of the Constitutional Rights Committee of the Los Angeles Bar Association, composed of W. H. Anderson, W. Joseph Ford and Karl Lobdell, appointed to investigate certain alleged illegal practices of federal officers in the deportation of aliens, has submitted its report to Joseph L. Lewison, Vice-Chairman of the Constitutional Rights Committee.

"The matters submitted to us for investigation," says the report, "were the following charges against the federal immigration authorities:

"*First*: That persons suspected of being aliens subject to deportation were summarily taken into custody—arrested—by immigration officers before any warrants for their arrests were obtained from the Department of Labor;

"*Second*: That persons so arrested were incarcerated by the immigration officers in some place of detention and were held *incommuncado* (subject to being seen by such immigration officers only), without any charge being officially placed against them, without any right or opportunity for release on bail being afforded them, and without any right of representation by counsel being accorded them; and were so held until warrants for their arrest were obtained from the Department of Labor;

"*Third*: That while so held such suspects were subjected to private examinations by immigration officials, without the benefit or advice of counsel, and that statements made by them upon such examination were used in obtaining warrants for their arrest from the Department of Labor, and were subsequently used against them in their deportation hearings.

"Ancillary to these charges against the federal immigration officials was the charge that the Sheriff of Los Angeles County received and incarcerated in the county jail of that county such aliens so arrested without warrants and held them *incommunicado* under instructions from the immigration officers and subject to the orders of such officers."

The report then sets out a letter from W. H. Anderson, Chairman of the Sub-Committee, to Walter E. Carr, District Director, United States Immigration Service at Los Angeles, in which it is stated that complaints have been brought before the main committee claiming that false arrests and unlawful imprisonment of aliens have been made with a view to their deportation if they are within the deportation provisions of the immigration law. Disclaiming any partisan spirit, or any intention to hamper the legal administration of the deportation laws when properly administered, the letter says:

"Briefly, we are advised (and an investigation at the Sheriff's office seems to bear out the correctness of our information) that the immigration agents under your jurisdiction are 'picking up'—in other words, taking into custody or, if you please, arresting—aliens who are suspected of being unlawfully in this country, or who are suspected of being subjects for deportation under the provisions of the Federal Immigration Law; that such persons are so taken into custody prior to any application for, and prior to any issuance of, any warrants authorizing the taking of them into custody; that when they are taken into custody most of them are turned over to the Sheriff of Los Angeles County and are confined in the county jail by him, under instructions from your department to hold them *incommunicado;* or, in other words, not to permit them to have any intercourse of any kind with any persons, relatives, friends, attorneys, or what not; that after they have been thus taken into custody and before any warrant issues it is the custom of your department, acting through some one or the other of your immigration agents, to privately question the aliens thus in custody, with a view to getting statements or admissions from them upon which you can base and do base your applications to the Department for a warrant under paragraph 1 of subdivision b of Rule 19, 'Arrest and Deportation on Warrant' of the Immigration Rules of January 1, 1930.'

"Our general committee (which I may advise you consists, with its Advisory Board and its Auxiliary Committee, of some thirty-two picked members of the Los Angeles Bar Association) desires through the sub-committee, of which I am chairman, to know, in the first instance, whether or not it is the custom of the Immigration Service in this District to institute its proceedings against any aliens who you think are proper subjects for deportation in substantially the manner above outlined?

"If your custom as to the methods adopted in this District by the Immigration Service, prior to the application for or the issuance of a warrant to take a suspected alien into custody, are different substantially from those above outlined, we would greatly appreciate your pointing out just what your procedure is.

"Furthermore, the Committee would feel under obligations to you, if aliens are taken into custody before the issuance of a warrant, if you would advise us as to what provisions of the law, either federal or state, you think legally authorize such a procedure.

"Finally, we would also like to be informed, if you or your agents do instruct the Sheriff to hold persons taken into custody without a warrant *incommunicado*, under what authority of law such instructions are given.

"We are also quite doubtful (though this is, perhaps, more a matter for the consideration of Sheriff Traeger) as to whether or not, in view of the provisions of Section 1601 of the Penal Code of this State. Sheriff Traeger has any legal right or authority to take any federal prisoners into his custody who have not been 'committed thereto by process or order issued under authority of the United States'.

* * *

"So far as we have been able by any investigation of the law to ascertain, the only authority for taking an alien into custody under the deportation provisions of the federal immigration laws is that found in Section 19 of the Immigration Act, which provides that when certain conditions exist the suspected alien 'shall, *upon the warrant of the Secretary of Labor,* be taken into custody and deported.'

* * *

"Another complaint that has been brought to the attention of our main committee is that Sheriff Traeger, under instructions from your Department, and your Department, at least until the last few days, have consistently refused to permit any attorneys purporting to represent any of the aliens held *incommunicado* to see or confer with such aliens; and while we are further advised that your practice in this matter has been somewhat modified recently as to certain attorneys in good standing, we are also advised (and we believe correctly)that no such premit has yet been given by your Department until you had accomplished your full purpose in taking the alien into custody, viz.: the obtaining of a statement from him to be used by you in applying for a warrant under the provisions of paragraph 1 of subdivision b of Rule 19 above referred to.

"An answer to this letter at your very earliest convenience would afford us great assistance in our investigation."

The Director's Statement

To this letter District Director Carr replied briefly, saying that he did not quite "understand the interest of the Bar Association in these matters," but offering to discuss the subject in a personal interview with the sub-committee. This interview was held. Mr. Carr demanded to know who had complained to the Committee, and upon being informed, indulged in "some invidious criticisms of what he claimed to be the methods of certain attorneys in the premises and, in effect, stated that the immigration officials felt it to be their duty to protect the aliens in their custody from such lawyers whose services could not be of any material advantage to such aliens, but who nevertheless, if and when employed, mulcted the unfortunate aliens with large and unnecessary lawyers' fees."

Being assured by the committee that it was not in any sense antagonistic to him or his department in the matter and that one of the purposes of the investigation was to discover and possibly aid in curing these weaknesses in the existing deportation laws which seemingly directly forced the immigration officials into illegal methods of enforcing them, Mr. Carr, says the report, "discussed the general situation, making in substance the following statements among others:

"*First*: That occasional arrests of deportation suspects were made without a warrant;

"*Second*: That no such arrests were made without first investigating and interviewing the suspect and from such investi-

gation and interview, getting satisfactory evidence that the suspect was subject to deportation;

"*Third*: That no arrests without first obtaining a warrant were made except in those instances where the suspect was of a vagrant character without any fixed known place of abode and was liable to disappear before a warrant could be obtained from the Department of Labor.

"*Fourth*: That under no circumstances was any suspect so arrested held *incommunicado* (by which he seemingly meant that they could be seen upon order of the proper immigration official, if such official saw fit to give such an order);

"*Fifth*: That no such detention or imprisonment of a suspect exceeded twenty-four hours, within which time a telegraphic warrant from the Department of Labor could always be obtained; and

"*Sixth*: That the practice above outlined was not confined to the Los Angeles District alone, but was general throughout the United States and had the full sanction of the Department of Labor, being based upon unwritten regulations of that Department authorized by the immigration laws.

What the Committee Found

"Our further general investigation leads us to believe that, possibly through ignorance of what has taken place, Mr. Carr was mistaken in some of his assertions.

"From evidence presented to us, we are strongly inclined to believe:

"That the arrests of suspected aliens without warrant is not incidental or casual or occasional, but is a fairly general practice, non-arrests being exceptions rather than the rule;

"That such arrests are not confined to persons first interviewed and are not based upon statements legitimately obtained from the arrested persons prior to such arrests, but are made largely, if not entirely, for the purpose of getting such persons into the exclusive control of immigration officers and of obtaining *ex parte* statements from such persons by immigration officers while such persons are in the exclusive control of such officers and are deprived by such officers of any independent advice, the statements thus obtained being obtained for the purpose of, and being used in the first instance for the purpose of, obtaining warrants of arrests from the Department of Labor and being later used as admissions by the aliens thus imprisoned and questioned;

"That such arrests and imprisonments without warrant are not confined to irresponsible vagrants who are without local habitation;

"That suspects arrested without warrant are held (or, at least, have been held) *incommunicado* as an actual fact, because they cannot be reached or interviewed without a permit from an immigration official, which, as we are advised, is seldom, if ever, granted until the purpose of the incarceration has been accomplished, viz.: the obtaining of an *ex parte* an unadvised statement from the suspect by an immigration official at a strictly private examination;

"That detentions (imprisonments) without a warrant frequently cover a number of days, during which the suspect is denied the right to see anyone, to employ counsel, or to be admitted to bail, as no bail is fixed until the warrant of arrest is issued by the Department of Labor—in fact, that such suspects are so held and no warrant applied for until the immigration officers have succeeded in obtaining from such suspects while so held a statement sufficiently satisfactory to such officials to enable them to base upon such statement an application for the issuance of a warrant for arrest.

53 Cases Cited

The Committee's report then states that its information is partially substantiated in many cases, the details of 53 of which are set out. It will be sufficient to quote from the report in two of these cases here, in order to furnish examples of the methods complained of, as follows:

"35. Yvonne Akerman and mother: Statement of counsel: 'This young woman and her mother were temporary visitors to the United States; they overstayed their time; the reason shown and proof being that their son and brother, a legal resident of the United States, was critically ill. The aliens were arrested by Walter S. Bliss at their home at 8:30 in the evening, February 13, 1930. Conversations taken in longhand were thereafter dictated to a stenographer of the Immigration Service, who afterwards set them in form and they were used as the alien's statement. The alien and her mother both are ladies of education and refinement. They were placed in the House of the Good Shepherd that same night; application for the warrant was not made until the following day. The warrant is dated February 15, 1930, but was not received until the 16th; and hearing was had on February 18. * *

* They were living and residing * * * in a fine residential section of Los Angeles, and were in no manner, shape or form evading arrest.'

"52. ZENKICHI OMAGARI: Statement of counsel: 'This alien was arrested by Inspector Bliss while working on a lawn near Santa Monica on August 26, 1930. The alien stated under oath that he asked both Inspector Bliss and another Inspector to please let him shut off the water on the property he was working on, before taking him in, which delay was refused; and friends related to me afterwards the water continued to run for about two days and considerable damage was done to the owner's property. This alien was taken to his home; his home was searched and one of the Immigration officers entertained a proposition of bribery. The officers continued to hold the alien and arranged for an interpreter to conduct the bribery proposal, even to the extent of having a certified check cashed at the bank and going back to the alien's home and there the transaction took place. This attempted bribery was made the subject matter of a criminal action in the Federal court; it was tried and the alien was found not guilty by Judge William P. James, the case being tried without a jury. The alien was arrested early in the morning of August 28th, and held all day, but the question of his right to remain in the United States did not take place until 7:00 p.m. that day, and on conclusion of this questioning the alien was placed in jail; the warrant of arrest was dated the following day and received August 30th.'

THE COMMITTEE'S CONCLUSIONS

"As a result of our investigations we are convinced that immigration officials frequently, if not consistently, either as a matter of expediency or because of a mistaken belief that they have a legal right to do so, violate the law in the particulars above enumerated in their efforts to successfully enforce the deportation provisions; that this practice is defended and encouraged, at least in this district, by the local head of the Immigration Service; that the inadequacy of the present law in the matter of arrest and detention of suspected aliens is made a tentative excuse for such illegal practices.

"The specious excuse that they are justifiable because they in the main bring about satisfactory results is merely the old and indefensible excuse that the end justifies the means—a casuistry which, when urged by law enforcers as a justification for lawless law enforcement, tends to bring the law and its enforcement into universal disrepute and contempt.

"Another practice brought to our attention, which to some extent at least seems to be indulged in by the immigration officials after procuring an arrest warrant, is that of coupling their compliance with the law, which requires them to advise the arrested accused of his right to counsel, with voluntary advice to the accused that the employment of counsel is not necessary and that he would fare better if no counsel were employed by him. * * *

"We were advised that the question of the duties and limitations of the Sheriff of Los Angeles County in the premises was before the County Counsel of that county for an opinion. Consequently, on March 20th, 1931, two of our members called upon Deputy County Counsel Mr. S. V. O. Prichard, who had the matter in charge.

"When we explained the nature of the complaints which had been made concerning the imprisonment in the county jail of suspected aliens arrested by deportation immigration officers. * * * Mr. Prichard expressed surprise at this statement and said that that situation had not been called to his attention. Thereupon (in our presence) he immediately got in touch by telephone with some official connected with the county jail, and stated to us that this official had advised him that there were certain of such prisoners then so held in that jail without any warrant for their arrest. After some discussion concerning the law bearing upon the sheriff's duties in holding federal prisoners, we left, with the understanding that Mr. Prichard would shortly render an opinion to the sheriff on the subject in hand. No such opinion, however, has been rendered. * * * Before arranging for this call upon the sheriff, the chairman of our committee called Mr. Prichard on the telephone and inquired as to whether or not the opinion in question had been rendered by him and if not why not, to which Mr. Prichard replied, in effect, that he had not rendered the opinion for the following reasons:

"FIRST: Because he had made a careful check of immigration deportation prisoners now held in our county jail, and found that none was now so held without an arrest warrant;

"SECOND: Because the sheriff had assured him that the federal deportation offi-

cers would not in the future turn over any such prisoners to the sheriff's custody without an accompanying arrest warrant;

"THIRD: That no such prisoners have been or are being held *incommunicado;* but that the sheriff's office does not permit anyone to visit such prisoners without a permit from the deportation officials, and the deportation officials do not issue any such permits to attorneys unless such attorneys can furnish evidence satisfactory to such officials that they have been employed to represent any given alien held for deportation to see whom a premit is requested.

* * *

"We respectfully submit and suggest:

"FIRST: That if the illegal practices above outlined are indulged in by the federal immigration officers (and such seems to be the case), they should be discontinued by order of the proper authority or authorities;

"SECOND: That if the present laws, rules and regulations with reference to the arrest, imprisonment and detention of suspected aliens are insufficient or inadequate to insure the legal deportation of such aliens, then some adequate steps should be taken to cure the weaknesses in such laws, rules and regulations; but that until such laws are changed they should not be violated by immigration officials or other law enforcers, as such violations constitute lawless law enforcement;

"THIRD: That the attention of the Section of the Wickersham Law Enforcement Committee which deals with 'Lawless Law Enforcement' should be called to the situation under investigation, and to that end that a copy of this report should be transmitted to that Section of said Commission;

"FOURTH: That a copy of this report should also be sent to the United States Secretary of Labor, to the United States Attorney General, to both of the United States Senators from California, and to each of the members of Congress representing this particular immigration district;

"FIFTH: That such further distribution of this report should be made as is deemed advisable by the main committee.

Respectfully submitted,
W. H. ANDERSON, *Chairman*
W. JOSEPH FORD
KARL LOBDELL